

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5466 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHHAGANLAL MOHANLAL DALAL

Versus

BUDHABHAI BHAGUBHAI PARDESHI

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Appearance:

MR VM TRIVEDI for Petitioner

MR SK JHAVERI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/08/97

ORAL JUDGEMENT

1. Challenge is made by the petitioner by this special civil application to the order of the three authorities below under which the respondent was held to be an agricultural labourer.

2. The petitioner filed a civil suit No.28/64 in the Court of Civil Judge, Vyara for recovery of the suit premises from the respondent. An issue has been raised

on the plea of the respondent, herein, whether the respondent is an agricultural labourer or not, and on which issue No.7A has been framed. The reference for decision on the issue has been made by the Civil Court to the Agricultural Land Tribunal at Uchachhal, and the first authority came to the conclusion that the respondent is an agricultural labourer vide its judgment dated 13th October, 1980. The petitioner preferred an appeal against the said order, which came to be dismissed by the Dy. Collector, Vyara under its order dated 16th March, 1981. Then the matter has been taken up by the petitioner to the Gujarat Revenue Tribunal in Tenancy B.S. No.61/81, which came to be dismissed on 9th January, 1985. Hence, this special civil application.

3. The learned counsel for the petitioner raised two fold contentions before this Court. Firstly, it is contended that the first authority has committed a serious illegality in proceeding in the matter as if the burden of proof that the respondent is not an agricultural labourer lies on the petitioner. The first authority has committed an error in considering it to be a case as if the petitioner is the plaintiff and the respondent-defendant. It has next been contended that in view of the evidence of the respondent himself that he was holding the bullock and bullock cart, it cannot be said that he is solely dependant on the manual agricultural labour.

4. On the other hand, the counsel for the respondent, Shri S.K. Jhaveri, contended that all the three authorities concurrently decided the matter against the petitioner, and as such, this Court sitting under Article 227 of the Constitution may not interfere with the finding of fact. It has next been contended that once both the parties have led the evidence on the issue then the question of burden of proof hardly has any substance. After receiving of the evidence, the authorities have to decide on the basis of the same either way. Lastly, the counsel for the respondent contended that after appreciating the evidence, the three authorities have reached to the conclusion that the respondent is an agricultural labourer and if on the basis of the said evidence two views are possible then this Court sitting under Article 227 of the Constitution may not interfere with the view taken by the authorities below.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. The parties have gone on trial on Issue no.7A before the Revenue Tribunal. Both the parties were knowing well what they have to prove in respect of their cases and with this clear knowledge they have produced the evidence. So when both the parties produced the evidence on issue then the burden of proof may hardly have any substance in such matters. After the evidence of the parties on the issue is taken, the Court has to decide which of the evidence has to be accepted. It is not the case of the petitioner that the respondent has not produced any evidence in support of his case. In that case, the matter would have been different, but that is not the case here. So, the first ground raised by the counsel for the petitioner is hardly of any substance and the same is rejected.

7. So far as the second contention of the counsel for the petitioner is concerned, it is suffice to say that all the three authorities have concurrently held that the respondent is an agricultural labourer. This finding has been given on the basis of appreciation of evidence of both the parties, and after going through the judgment of the Tribunal, I do not find any perversity therein. This Court sitting under Article 227 of the Constitution can only interfere with the order of the Tribunal where it finds that the finding is perverse or there is no evidence in support of the finding recorded by the authorities below or the authorities below have misdirected themselves on the evidence produced by the parties. Present is a case of appreciation of evidence produced by both the parties and thereafter to decide whether the respondent is an agricultural labourer or not. It is not the case of the petitioner that any of the evidence produced by the respondent has been misread or any of the evidence material on the subject produced by the petitioner has not been considered. On the basis of the evidence which has been produced by the parties, the conclusion which has been drawn in the matter to hold the respondent as an agricultural labourer could have been drawn, and as such, I find sufficient merits in the contention of the counsel for the respondent that with this finding of fact, this Court should not interfere sitting under Article 227 of the Constitution. Even if the respondent has bullock or bullock cart, it cannot be presumed from that, that he is not an agricultural labourer. It depends on substantial source of income of respondent and on the basis of the appreciation of evidence, if the authorities below held in favour of the respondent, then it cannot be said to be a perverse approach.

8. Taking into consideration the totality of the facts of this case, no interference is called for in the matter of this Court sitting under Article 227 of the Constitution of India.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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